
IN THE SUPREME COURT OF THE STATE OF MISSOURI

STATE ex rel JAMES D. HODGES,)
)
Relator,)
)
Vs.)
)
THE HONORABLE JODIE)
ASEL, CIRCUIT COURT OF)
BOONE COUNTY, MISSOURI)
and GEORGE LOMBARDI,)
DIRECTOR OF THE DEPARTMENT)
OF CORRECTIONS,)
)
Respondents.)

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

RELATOR'S REPLY BRIEF

Bradley H. Lockenvitz # 27150
200 Lindell Drive
Columbia, Missouri 65203
573-280-8365
Fax 636-583-3808
Bhl19791984@yahoo.com

ATTORNEY FOR RELATOR

TABLE OF CONTENTS

Table of Authorities.....	2
Point I.....	3
Reply Argument.....	4-7
Conclusion	8
Certification of Compliance	9
Certificate of Service	9

TABLE OF AUTHORITIES

<u>Authority</u>	<u>Page</u>
<i>In re Boland</i> , 155 S.W.3d 65, 67 (Mo. banc 2005).....	3,4
<i>Gott v. Dir. of Revenue</i> , 5 SW3d 155, 159 (Mo. banc 1999).....	3,4
<i>J.P. v. State Family Support Div.</i> , 318 SW3d 140, 148 (MoApp WD 2010).....	3,5
<i>PDQ Tower v. Adams</i> , 213 SW3d 697, 698 (MoApp 2007).....	3,5
<i>State ex rel. Nixon v. Quiktrip Corp.</i> , 133 SW3d 33 (Mo. banc 2004).....	4

POINT I

In response to respondents' argument that the minimum incarceration provisions of Sec. 577.023.6(4) control over the release provisions of Sec. 217.362, RSMo.

Respondents' argument that the minimum incarceration provision of Sec. 577.023.6(4), RSMo, prevents release for chronic offenders who complete long term treatment conflicts with the specific legislative purpose set forth in Sec. 217.362, RSMo, in that immediate release upon completion of long term treatment is an integral part of the treatment program for chronic offenders, not only as a necessary incentive for completing treatment, but also to permit immediate application of the principles of recovery in civilized society rather than returning the offender to the challenges of survival in the prison's general population.

In re Boland, 155 S.W.3d 65, 67 (Mo. banc 2005).

Gott v. Dir. of Revenue, 5 SW3d 155, 159 (Mo. banc 1999).

J.P. v. State Family Support Div., 318 SW3d 140, 148

(MoApp WD 2010).

PDQ Tower v. Adams, 213 SW3d 697, 698 (MoApp 2007).

REPLY ARGUMENT

In response to respondents' argument in Point I of their brief that the minimum incarceration provisions of Sec. 577.023.6(4) control over the release provisions of Sec. 217.362, RSMo.

Respondents' argument that the minimum incarceration provisions of Sec. 577.023.6(4), RSMo, control over the release provisions of Sec. 217.362, RSMo, conflicts with the specific legislative purpose set forth in Sec. 217.362, RSMo, in that immediate release upon completion of long term treatment is an integral part of a specific treatment program for chronic offenders, because it serves as a necessary incentive for completing treatment, and it permits immediate application of the principles of recovery in civilized society rather than first returning the offender to the challenges of survival in the prison's general population.

As argued previously, the primary rule of statutory construction is glean the legislative intent by determining the objective to be accomplished, *In re Boland*, 155 S.W.3d 65, 67 (Mo. banc 2005). Courts must consider the object the legislature seeks to accomplish with an eye toward finding resolution to the problems addressed therein, *Gott v. Dir. of Revenue*, 5 SW3d 155, 159 (Mo. banc 1999). See also *State ex rel. Nixon v. Quiktrip*

Corp., 133 SW3d 33 (Mo. banc 2004). Statutes are to be read so as to give effect to the legislative purpose, *J.P. v. State Family Support Div.*, 318 SW3d 140, 148 (MoApp WD 2010). Statutes are not to be read narrowly if the narrow interpretation conflicts with the purpose of the statute, *PDQ Tower v. Adams*, 213 SW3d 697, 698 (MoApp 2007).

It goes without saying that the legislative purpose to be served by the enactment of Sec. 217.362, RSMo, was to provide a new and unique opportunity for rehabilitation for a class of repeat offenders who have proven themselves vulnerable to addiction. The release provisions of Sec. 217.362 indicate a legislative plan to address addiction and recidivism that includes both a reward and an opportunity to apply the principles of rehabilitation immediately upon successful completion of the treatment program. These release provisions reveal an awareness or belief by the legislature that the chances of success in the application of the principles of rehabilitation increase substantially if the offender is permitted to apply these principles outside of the prison setting. Said another way, the purpose of the treatment plan is diminished or destroyed if one who has just come out of treatment must first return to the rigors and challenges of life in the general population of a prison before being given the opportunity to employ the principles of recovery in a normal setting.

As pointed out in relator's original brief, the survival skills normally associated with life in prison, such as keeping to oneself to avoid conflict, often are inconsistent with the principles of recovery. And participation in the program can make the offender a target of resentment among general population inmates who have not been given such an opportunity. Subjecting the treated offender to such rigors and challenges can undo the benefits of treatment before the offender has a chance to apply them.

Release upon completion of treatment is but one part of the unique legislative plan in Sec. 217.362 that is meant to address addiction and recidivism among chronic offenders. Other unique and specific parts of the plan include the situs and length of the treatment and how it is initiated. The plan gives the offender a taste, or re-taste of prison and provides a full year of treatment inside the prison walls. Prior to the enactment of Sec. 217.362, treatment inside or outside of prison did not always involve an in-patient program of one year in duration. Moreover, the Sec. 217.362 plan only is available if recommended by the sentencing judge.

Read in combination, the individual parts of Sec. 217.362, RSMo, reveal a specific plan meant as an alternative to pre-existing methods of addressing chronic offenders with addictions. It would appear that the statutory purpose of these combined parts is to provide another possible

solution to recidivism and addiction in light of the failures of the past. In that regard, the sum of the parts of the statutory plan is more important than the individual parts themselves. Respondents' argument misses that point.

With early release being but part of a larger, specific plan addressing recidivism and addiction, execution of the plan leads to the conclusion that it stands as an exception to the minimum sentencing provisions of Sec. 577.023.6(4), RSMo. This conclusion does not nullify the mandatory minimum standards for chronic offenders in general, for early release under Sec. 217.362, RSMo, only applies to those offenders who: (1) are specifically selected by the sentencing judge and (2) successfully take advantage of the opportunity the legislature saw fit to give them.

Respondents' argument that the release provisions of the long term treatment statute do not provide an exception to the mandatory minimum provisions of Sec. 577.023, glides over the various salient features of the legislative scheme that work together, rather than separately, to effect the intended purpose. Furthermore, by excluding chronic offenders from the early provisions of the program, the Sec.217.362 program is not permitted to work in its entirety for those most in need of it. Such an exclusion defeats the purpose of the legislation for the very class of offenders for whom it was most meant to apply.

CONCLUSION

For the foregoing reasons, this Court should issue its Writ of Mandamus as prayed for by relator.

/s/Bradley H. Lockenvitz

Bradley H. Lockenvitz #27150

200 Lindell Drive

Columbia, Missouri 65203

573-280-8365

(fax) 636-583-3808

Bhl19791982@yahoo.com

Attorney for Relator

CERTIFICATION OF COMPLIANCE

I hereby certify that, as required by Rule 84.06 (c), this brief complies with the word of line limits of Rule 84.06 (b), and has a word count of 1,393 words.

The undersigned relied on the word count feature on his form's word processing system to arrive at that number. The original of this brief has been signed and maintained by filer pursuant to Rule 55.03.

CERTIFICATE OF SERVICE

Relator hereby certifies that he served a copy Relator's Reply Brief, by placing the same in the United States Mail, first class, postage prepaid, on this 16th day of May, 2015, to:

Jonathon Jacobs
Assistant Prosecuting Attorney
705 E. Walnut Street
Columbia, MO 65201

Daniel Knight
Boone County Prosecuting Attorney
Boone County Courthouse, 4th Floor
705 E. Walnut Street
Columbia, MO 65201
(573) 886-4100

Caroline Coulter
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102

Attorneys for respondents

/s/Bradley H. Lockenvitz

Bradley H. Lockenvitz #27150

200 Lindell Drive

Columbia, Missouri 65203

573-280-8365

(fax) 636-583-3808

Bhl19791982@yahoo.com

Attorney for Relator